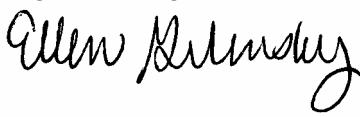


COMMONWEALTH OF VIRGINIA
Department of Environmental Quality
Division of Water Quality Programs
Ellen Gilinsky, Ph.D., Director

Subject: **Guidance Memo No. 07-2005, Amendment No. 1**
Authorization to issue certification for tax exemptions of stormwater management developments and property

To: DEQ Regional Directors, DEQ Deputy Regional Directors, Russ Baxter, Deputy Director, DCR; Lee Hill, Storm Water Management Program Director, DCR

From: Ellen Gilinsky, Ph.D., Director 

Date: April 16, 2007

Copies: James Golden, Rick Weeks, Regional Water Permit Managers, OWPP staff, OWE staff

Summary:

The original guidance was derived from GM 92-006, which addressed sales tax exemptions issued by the Department of Taxation (after DEQ provided certification of the pollution control equipment in question). This revision correctly identifies local governing bodies as being authorized to approve real estate tax exemptions after DEQ provides the necessary certification.

Electronic Copy:

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET, and for the general public on DEQ's website at:

Contact Information:

Please contact Kyle Ivar Winter, P.E., Office of Water Permit Programs, at (804) 698-4182 or kiwinter@deq.virginia.gov with any questions regarding the application of this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Background:

§ 58.1-3660 of the *Code of Virginia* provides that pollution control equipment and facilities are exempt from taxes. In 1996, the General Assembly amended this legislation to include some categories of stormwater management technology as stated in § 58.1-3660.1 of the *Code of Virginia*:

“A. Certified stormwater management developments and property, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classifications of real property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation.

“B. As used in this section, "certified stormwater management developments and property" means any real estate improvements constructed from permeable material, such as, but not limited to, roads, parking lots, patios, and driveways, which are otherwise constructed of impermeable materials, and which the Department of Environmental Quality has certified to be designed, constructed, or reconstructed for the primary purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth by minimizing stormwater runoff. Permeable material shall be used for at least seventy percent of the surface areas that would otherwise be covered by impermeable materials.”

The 2004 Virginia General Assembly unanimously passed House Bill 1177 transferring regulatory authority of National Pollutant Discharge Elimination System (NPDES) programs related to municipal separate storm sewer systems (MS4) and construction activities from the State Water Control Board to the Soil and Water Conservation Board and transferred oversight of these programs from the Department of Environmental Quality to the Department of Conservation and Recreation. This transfer became effective January 29, 2005. As a result, DCR is responsible for the issuance, denial, revocation, termination and enforcement of NPDES permits for the control of stormwater discharges from MS4s and land disturbing activities under the Virginia Stormwater Management Program.

However, the General Assembly did not relieve DEQ of the certification authority granted in § 58.1-3660.1, despite the fact that DEQ no longer administers the programs to which § 58.1-3660.1 applies. It should be noted that DEQ does not actually grant the tax exemption; the local governing body (town, city, or county) does, with the DEQ certification a necessary condition for the tax exemption. It should also be noted that before the local governing body can grant these tax exemptions, the local ordinance must be revised to be consistent with § 58.1-3660.1.

Recommended Action:

Until this certification authority is transferred from DEQ to DCR, when DEQ staff receive requests for tax exemption certification, these requests should be forwarded to DCR stormwater program staff for review in accordance with the following procedure.

This guidance contains a recommended response to inquiries about what information is necessary for DEQ to review in order to provide the certification to the local governing body. It is recommended that the project name and number, project completion date and a moderately detailed description of the project be obtained.

The request for a tax exemption should contain all the information needed by DEQ in order for the request to be processed to the local governing body. Because local governments are not all structured in the same manner, DEQ cannot provide a standard contact (i.e., treasurer, commissioner of the revenue); the party making the exemption request will need to provide the contact information for that local governing body, and should verify that the locality's ordinance has been revised to be consistent with § 58.1-3660.1. If information is missing, DCR staff should contact the applicant to obtain the additional information needed. Once the information is

obtained, it should be reviewed by DCR using the Tax Exemption Check Sheet is included in this guidance. Once completed, the Check Sheet should be forwarded to DEQ's Office of Water Permit Programs, who will either provide the certification to the local governing body or notify the applicant that the proposal was determined not to be in compliance with the requirements of § 58.1-3660.1 of the *Code of Virginia*.

Procedure for Certifying Tax Exemptions:

§ 58.1-3660.1.B. of the *Code of Virginia* establishes the following criteria:

1. The property consists of any real estate improvements constructed from permeable material, such as, but not limited to, roads, parking lots, patios, and driveways, which are otherwise constructed of impermeable materials;
2. DEQ has certified to be designed, constructed, or reconstructed for the primary purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth by minimizing stormwater runoff, and
3. Permeable material shall be used for at least seventy percent of the surface areas that would otherwise be covered by impermeable materials.

If these criteria are met, the certification must be granted. This certification does not imply that DEQ requires, or approves of, the proposed improvements.

When implementing § 58.1-3660 of the *Code of Virginia*, DEQ has generally required that the equipment to be used in a pollution control facility be permanently installed. There may be exceptions to this guidance (and, given the nature of real estate improvements, unlikely) but these should be considered on a case-by-case basis and should be justified by the applicant in his request.

Only one certification is needed for each project. A contractor or subcontractor may request an exemption for a project which has already been certified to the owner, an engineering firm, or a general contractor. In such cases, the applicant should be contacted and informed that the project has already been certified by DEQ and that he should contact the local governing body directly to request the issuance of a tax exemption. The applicant should submit the same information to the local governing body that he would have submitted to DEQ.

DEQ or DCR may receive requests for projects that have already been completed and the applicant is requesting tax exemption retroactively. The decision of DEQ depends on whether the criteria in § 58.1-3660.1.B. of the *Code of Virginia* have been met, and not whether the facilities have been completed; these requests may be processed in the same manner as others received by DEQ or DCR.

The remaining guidance consists of correspondence and forms that should be used in the implementation of this guidance.

SAMPLE LETTER TO INQUIRIES CONCERNING TAX EXEMPTION CERTIFICATION

Name and address -

RE: Inquiry Concerning Certification for Tax Exemptions of Stormwater Management Developments and Property

Dear Applicant:

I am responding to your inquiry concerning the procedures to follow when requesting a state tax exemption for stormwater management developments and property under § 58.1-3660.1 of the *Code of Virginia*. We need a letter from you requesting that the Department of Environmental Quality certifies to the local governing body that your project:

1. Consists of real estate improvements constructed from permeable material, such as, but not limited to, roads, parking lots, patios, and driveways, which are otherwise constructed of impermeable materials;
2. Are designed, constructed, or reconstructed for the primary purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth by minimizing stormwater runoff, and
3. Permeable material is used for at least seventy percent of the surface areas that would otherwise be covered by impermeable materials.

In your request, you should provide the following information:

1. Owner.
2. Project Name
3. Project Number
4. Project Completion Date
5. Moderately detailed description of the project, including a site map and other information necessary to verify your request
6. Name, and address, and relevant contact information for the local governing body in which the project will be constructed.
7. A copy of the local ordinance, showing that the local governing body has revised the ordinance to be consistent with § 58.1-3660.1 of the *Code of Virginia*. (if this has not occurred, the local governing body will not be able to provide the tax exemption irrespective of DEQ's certification).

Upon receipt of your request, DEQ will coordinate review of the request with the Department of Conservation (DCR), and, if appropriate, DEQ will make the certification to the local governing body. The local governing body will then send the tax exemption directly to you. If you have any questions, please contact DEQ's Office of Water Permit Programs at (804) 698-4182 or DCR's Stormwater Management Program Permits Office at (804) 786-3998.

Sincerely,

DEQ/DCR staff

SAMPLE TAX EXEMPTION CERTIFICATION TO LOCAL GOVERNING BODY

(local governing body)

Subject: Project Name(s):
 Owner:
 Construction Company:

Dear Sir/Madam:

In accordance with § 58.1-3660.1 of the *Code of Virginia*, DEQ certifies that the enclosed letter(s) dated XX/XX/20XX describe(s) real estate improvements constructed from permeable material, which are otherwise constructed of impermeable materials, and that are designed, constructed, or reconstructed for the primary purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth by minimizing stormwater runoff.

If we may be of further assistance, please contact us. Any further action or decision regarding this project is a matter for your office.

Sincerely,

DEQ staff

Enclosure(s)

Cc: Owner and/or construction company

SAMPLE TAX EXEMPTION CERTIFICATION CHECK SHEET

Subject: Tax Exemption Certification Check Sheet

To: DEQ, Office of Water Permit Programs

From: DCR, Stormwater Management Program Permits Office

Date:

1. Proposal Identification:

2. Owner:

3. Construction Company:

4. Does this project consist of real estate improvements constructed from permeable material, such as, but not limited to, roads, parking lots, patios, and driveways, which are otherwise constructed of impermeable materials;

Yes_____No_____

5. Does this project appear to be “designed, constructed, or reconstructed for the primary purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth by minimizing stormwater runoff”?

Yes_____No_____

6. Is permeable material used for at least seventy percent of the surface areas that would otherwise be covered by impermeable materials?

Yes_____No_____